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MISCELLANEOUS

Supreme Court of the United States

OCTOBER TERM, 1952

No. 43

MONTGOMERY BUILDING & CONSTRUCTION TRADES COUNCIL, ET AL.,

Petitioners,

vs.

LEDBETTER ERECTION COMPANY, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

BRIEF FOR THE PETITIONERS

Opinions Below

The principal opinion of the Supreme Court of Alabama (R. 38-54) is reported at ..... Ala. ....., 57 So. 2nd 112. The opinion of the Supreme Court of Alabama (R. 54-56), denying an application for rehearing, is reported at ..... Ala. ....., 57 So. 2d 121. The decisions of the Circuit Court for Montgomery County, Alabama, granting an injunction (R. 9) and refusing to dissolve it (R. 33) are unreported.

Jurisdiction

The judgment of the Supreme Court of Alabama was entered June 28, 1951 (R. 56). The opinion of that Court,

denying an application for rehearing, was entered January 10, 1952 (R. 54). A second application for rehearing was denied March 6, 1952 (R. 58). A petition for certiorari was filed April 25, 1952, and granted June 2, 1952. Jurisdiction of this Court is invoked under 28 U.S.C., §1257(3).

Question Presented

Whether a state court may, at the request of an employer, issue a temporary injunction against alleged violations of Sections 8(b)(4)(A) and (B) of the Labor-Management Relations Act of 1947.

Statute Involved

The pertinent provisions of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C., Supp. IV, 141 et seq., are set forth in f.n. 5 and f.n. 7, *infra*.

Statement

On October 20, 1950, Ledbetter Erection Company, the respondent herein, filed a complaint in the Circuit Court for Montgomery County, Alabama, requesting an injunction against the Montgomery Building and Construction Trades Council and others, petitioners herein, to prohibit picketing of a building project in Montgomery, Alabama.

The complaint alleged that Bear Brothers, a general contractor, entered into an agreement for the construction of a multi-story apartment house in Montgomery (R. 3, 6). Bear Brothers then entered into a subcontract with Ledbetter for the erection of structural steel on the project (R. 3). The employees of Bear Brothers did not belong to a labor union; the employees of Ledbetter had for many years been a party to a union-shop contract with the International Association of Bridge, Structural and Ornamental Iron Workers (R. 3, 4). The petitioner Trades

Council, seeking to force Bear Brothers to bargain with some of its member unions, placed a picket line around the construction project (R. 4, 5).

The complaint further alleged that the union employees of Ledbetter were not willing to cross the picket line to perform work on the building, and that action of the Trades Council was in violation of Sec. 8(b)(4) of the National Labor Relations Act, as amended (R. 5). Later in its complaint, respondent alleged that the petitioners' activity also violated Sections 54 and 57 of Title 14 of the Code of Alabama of 1940, which prohibit unlawful interference with complainant's business and unlawful means of preventing a person from engaging in a lawful occupation or business (R. 7). This allegation, however, was never acted upon by the Alabama courts, nor were the state statutes ever mentioned in the opinions of the Supreme Court of Alabama.

The defendants filed an answer (R. 14) which generally denied the allegations of the complaint and which denied that interstate commerce was involved. However, this answer was subsequently withdrawn (R. 33) and, under the motion to dissolve, interstate commerce was admitted and only lack of jurisdiction in the state courts to issue injunctive relief was relied upon (R. 33, 41), so that, as the record now stands, defendants do not contest having engaged in activities which might violate Section 8(b)(4) of the Act.[1]

A temporary injunction, restraining petitioners from picketing the construction project, was issued by the Circuit Court *ex parte* on November 20, 1950 (R. 10). Petitioners moved to dissolve the injunction on December 4, 1950 (R. 12), and both parties filed affidavits in connection therewith. The affidavit of Fred C. Bear, Vice-President of Bear Brothers, regarding the effect on commerce, contained the following statements (R. 22):

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[1] See remark in opinion of Alabama Supreme Court below (R. 42) that "The bill alleges that the defendants were engaged in an unfair labor practice under such definition, and that contention is not seriously controverted by appellants."

"... that a labor dispute or stoppage of work on said project would materially obstruct or interfere with the free flow of goods in interstate commerce; that a large portion of the materials used in the construction of said job are shipped in interstate commerce and if such job were stopped by union activities, the flow of such goods in commerce would cease; for example, all of the exterior covering of said apartment house is brick, which will be shipped from Texas; the glazed tile from Pennsylvania; the steel sash from Detroit, Michigan; door frames from New York; metal lath from Ohio, plaster from Georgia, Virginia and Texas; cement from various sources, including places outside of the State of Alabama; the structural steel was rolled at a rolling mill outside of the State of Alabama; paint and acoustical tile are not manufactured in the State of Alabama and are necessarily brought in from outside the State; electrical wiring and fixtures likewise, and in fact a great majority of the materials used on such job will necessarily move in interstate commerce."

The affidavit of S. M. Walker, Vice-President of the Ledbetter Erection Co., stated that a crane costing $25,000 would be prevented from being used in construction work in and out of the State of Alabama, which would delay completion of those jobs (R. 30).

On December 21, 1950, the motion to dissolve the temporary injunction was denied (R. 33). The case was thereupon duly appealed to the Supreme Court of Alabama (R. 36). The Alabama Supreme Court affirmed the decision of the Circuit Court (R. 56), basing its authority solely upon the alleged violation of the National Labor Relations Act, as amended. Application for rehearing was duly filed on July 10, 1951, and overruled January 10, 1952 (R. 57). A second application for rehearing was filed on January 21, 1952, and overruled March 6, 1952 (R. 58).

Specification of Errors

The Supreme Court of Alabama erred:

1. In holding that the Labor-Management Relations Act

of 1947 did not preclude the exercise of jurisdiction by state courts to issue preliminary injunctive relief at the request of private individuals for alleged violations of that Act.

2. In failing to hold that the Circuit Court of Montgomery County, Alabama, was without jurisdiction to issue the injunction herein, enjoining alleged violations of the Labor-Management Relations Act of 1947, and in refusing to dissolve such injuction.

SUMMARY OF ARGUMENT

Congress, under the 1947 Amendments to the National Labor Relations Act, intended to provide exclusive remedies, with enforcement of rights and obligations obtainable only as specified under the Act, and intended to preclude the granting of temporary relief by state courts such as was accorded by the Alabama courts in this case.

1. The language of the 1947 Act itself discloses such an intent. The 1935 Act, which lodged exclusive jurisdiction in the National Labor Relations Board to provide remedies for alleged violations, was greatly enlarged and expanded in 1947 so as to embrace numerous aspects of labor relations affecting interstate commerce. The need for continuing the 1935 policy of affording singleness and expertness of remedy by a public board acting in the public interest presumably was greater than ever, and Congress gave no indication whatsoever, either in the language of the Act or in its general structure, that it intended to change the concept of public administration to that of vindication of private rights by private litigants in numerous state and federal forums. Surely, very affirmative language indicating a desire to change the concept of remedy underlying the 1935 Act could be expected in the 1947 Amendments if Congress did actually intend so drastic a change. Far from any such affirmative language appearing, however, Congress continued to declare that the power given the Board

under Section 10(a) to prevent unfair labor practices "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise." Even more significantly, it went on to add a new proviso to Section 10(a) prescribing exactly under what conditions the states could attempt to enforce the Act. None of these conditions (which include an express agreement by the Board to cede jurisdiction) have been met in the present case, and in their absence it must be assumed that state action stands excluded under the principle *expressio unis est exclusio alterius.* While the 1947 Congress, in conferring jurisdiction upon the federal Board to remedy unfair labor practices, eliminated the phrase "This power shall be exclusive" which appeared in the similar grant of jurisdiction under the 1935 Act, this omission is explained by the need for accommodation of two additional remedies appearing for the first time in the 1947 Act, and to accommodate the possibility that the Board might cede enforcement of jurisdiction to the states under the 10(a) proviso clause. The legislative history is conclusive that these were the reasons which motivated Congress in eliminating the "exclusive" clause from the 1947 Act.

2. Sections 10(j), (k) and (l) of the 1947 Act contain detailed provisions specifying the manner in which temporary injunctive relief against alleged violations of the Act can be obtained; none of these provisions contemplate or permit suits by private individuals in the state courts. Accordingly, the rule which presumes preemption, as first announced in *Houston v. Moore,* 5 Wheat. 1, and as reaffirmed in numerous subsequent decisions,—that when Congress prescribes specific punishments or remedies, Congress has indicated the extent to which it is willing to go and desires no additional or even concomitant state remedy—is here applicable, as well as the corollary thereto —that where Congress has entered a field and afforded

particular remedies or punishments, affirmative consent by Congress to concurrent or additional remedies or punishments by state or other agencies is required. See *California v. Zook*, 336 U.S. 725, at 737.

3. Considerations of rationale and policy indicate Congressional intent to preclude the granting of preliminary injunctive relief in the state courts at the request of private individuals. With Congress at pains carefully to prescribe the type of remedy available for alleged violations, the forum in which such relief could be sought and the litigants empowered to seek relief, it is unreasonable to attribute a further intent to open wide the use of the injunctive processes to private litigants in the thousands of state courts throughout the forty-eight states. Surely, Congress could have contemplated no such crazy quilt of diversity nor such mire of confusion as would inevitably result, yet alone the reduction of the functions of the National Labor Relations Board to a state of idle impotency, with private individuals circumventing the orderly procedures contained in the federal Act in favor of those of any state forum they might consider more friendly to their interests. The policy of uniformity and expertness of administration would quickly be frustrated, and a direct conflict between procedures provided for in the Act and those which private litigants in their astuteness could devise would repeatedly ensue—results which it cannot readily be assumed it was the desire of Congress to permit.

4. The legislative history of the 1947 Act conclusively indicates, in committee reports, in explanations tendered by sponsors of the bill, and in questions and answers appearing in the course of debates, that Congress intended (1) to continue the policy of public vindication of public rights by a public agency contained in the original Act, and (2) to exclude private remedies for violations or remedies other than those expressly provided for in the Act and, specifically, to exclude the granting of temporary injunc-

tions by the state courts unless permitted by the National Labor Relations Board under an express agreement. Further, the history of the 1947 Amendments before Congress afford a conclusive answer to the principal contention advanced by respondents herein and to the principal justification advanced by the court below in upholding jurisdiction in the state courts to issue temporary relief, namely, that Congress could not have intended to oust state equity courts of their traditional function by granting temporary relief to avoid irreparable injury. That same argument was advanced by Senator Taft and other sponsors of proposals to permit proceedings at the suit of private individuals for temporary relief in the state courts, and such proposals were voted down after a careful weighing by Congress of those arguments with the opposing arguments that unrestrained use of the injunctive process in labor disputes too readily lent itself to abuse. Congress having the power to make this determination, it is to Congress and not to this Court that any "irreparable injury" arguments should be addressed.

A final argument made by respondents, and appearing in the opinion of the court below, is that the Board might not exercise its jurisdiction because the effect on commerce is slight or for budgetary or other administrative reasons. A short answer to this contention is that respondent has at no time applied to the Board for relief either by the filing of charges or otherwise; thus whether the Board would or would not grant relief is a matter of pure conjecture and speculation. Even had application been made, and the Board in its discretion had refused to process the case, respondent nevertheless could have no standing in the courts below. As we have seen, the Act permits intervention by the state in the processing of unfair labor practice cases only under certain circumstances and only under express agreement by the Board, and these conditions have not been met in the present case.

ARGUMENT

I

This Court has jurisdiction to review the decision below.

Although this Court has granted certiorari, thus indicating that the decision of the Alabama Supreme Court is a reviewable one, nevertheless it might be well to set forth a few principles in support of the Court's jurisdiction in view of the objections raised by respondent herein. Since the Judicial Code (28 U.S.C. 1257) confers on this Court power to review only "final judgments or decrees rendered by the highest court of a state . . . ," this Court has ordinarily declined to review cases involving temporary rather than final, permanent relief. See *Moses v. Mayor,* 15 Wall. 387; *Williams v. Quill,* 303 U.S. 621.

This Court has indicated, however, that the rule of finality is not an absolute one and that the language used by Congress in 1789, in conferring power of review in this Court, will not be applied literally or mechanically. As stated by Mr. Justice Frankfurter in *Radio Station WOW v. Johnson,* 326 U.S. 120, at 124, speaking for the majority of the Court:

> "But even so circumscribed a legal concept as appealable finality has a penumbral area . . . Considerations of English usage as well as those of judicial policy would readily justify an interpretation of 'final judgment' so as to preclude reviewability here where anything further remains to be determined by a state court, no matter how disassociated from the only Federal issue that has finally been adjudicated by the highest court of the state. . . .
>
> "Unfortunately, however, the course of our jurisdictional history has not run as smoothly as such a mechanical rule would make it. To enforce it now, or to pronounce it for the future, would involve disregard of at least two controlling precedents, both of them expressing the views of numerous courts, and one of

> which has stood on our books for nearly a hundred years, in an opinion carrying the authority, especially weighty in such matters, of Chief Justice Taney."

In the earlier case referred to in the above quoted opinion —*Forgay v. Conrad*, 6 How. 201, Mr. Chief Justice Taney first indicated a policy of liberally interpreting and applying the requirement of finality as follows:

> "The question upon the motion to dismiss is whether this is a final decree, within the meaning of the Acts of Congress. Unfortunately, it is not final, in the strict, technical sense of that term. But this Court has not heretofore understood the words 'final decrees' in this strict and technical sense, but has given to them a more liberal, and, as we think, a more reasonable construction, and one more consonant to the intention of the Legislature."

Republic Natural Gas Company v. Oklahoma, 334 U.S. 62, followed *Radio Station WOW v. Johnson*. Mr. Justice Frankfurter, again speaking for the majority, indicated an additional area in which the requirement of finality would not be rigidly applied. In discussing a situation in which review would be permitted even though no technical finality was present, Justice Frankfurter indicated that a rigid application would not be required and that the rule would be relaxed where there existed "any immediate threat of irreparable damage . . . rendering postponed review so illusory as to make the decree 'final now or never'."

Mr. Justice Rutledge, dissenting in the *Republic Natural Gas Company* case, *supra*, reviewed the decisions of this Court which abjure a rigid and literal interpretation of the word "final" as appears in Section 1257 of the U.S. Code and concluded as follows:

> "The fact that all phases of the litigation are not concluded does not necessarily defeat our jurisdiction . . . But not every decision by a state court leaving the controversy open to further proceedings and orders is either inconclusive of the issues or premature for purposes of review under Section 237. This appears most

recently from the decision in Radio Station W.O.W. v. Johnson which applied a settled line of authorities to that effect. Cf. Richfield Oil Corp. v. State Bd. of Equalization, 329 U.S. 69, 91 L. Ed. 80, 67 S.Ct. 156.

"In such cases the formulation of the test of finality made in the Gospel Army and like decisions has not been followed. Instead that question, in the special circumstances, has been treated as posing essentially a practical problem, not one to be determined either by the label attached to the state court judgment by local law, Richfield Oil Corp. v. State Bd. of Equalization (US) supra, or by the merely mechanical inquiry whether some further order or proceeding beyond 'the ministerial act of entering the judgment' may be had or necessary after our decision is rendered. Radio Station W.O.W. v. Johnson, supra (326 US at 125, 89 L ed 2097, 65 S. Ct. 1475) . . . The section's [1257] policy to furnish full, adequate and prompt review outweighed any design to secure absolute and literal 'finality'."

In considering whether to exercise its jurisdiction to review, this Court has considered substance rather than form and has indicated that the face and form of the judgment is not controlling. *Clark v. Williard*, 292 U.S. 112, at 118; *Gospel Army v. Los Angeles*, 331 U.S. 543, at 546. In the present case the central, and indeed the only, point in issue is whether the state court has power to issue a temporary, as distinguished from a permanent injunction in view of the provisions of the Labor-Management Relations Act of 1947 conferring such power solely upon the National Labor Relations Board. The whole issue of preemption or conflict between federal and state authority and thus the whole federal question here revolves around the question of preliminary rather than final relief. The State Supreme Court, both in its principal opinion and in its opinion on rehearing, made its determination solely in respect to the right of the state courts to issue preliminary relief, and its judgment in this respect is final and conclusive in the State of Alabama and effectively disposes of that issue in a manner adverse

to the interests of petitioner and others similarly situated and adversely to the position taken by the National Labor Relations Board in its construction and administration of the federal Act. The Board insists (Memorandum as Amicus Curiae in Support of the petition, p. 2) that the action of respondent in seeking temporary relief from the state courts has "aborted the entire statutory scheme" and that "the integrity of the administrative process provided by Congress to remedy unfair labor practices cannot survive if private parties may, at their own option, simply avoid that process and obtain injunctive relief at their own instance from other tribunals." Here, then, is a clear case "where intermediate rulings may carry serious public consequences." This Court is well aware of the consequences often attendant upon the issuance of preliminary injunctions in labor disputes. As will be seen in the discussion on the merits hereafter in this brief, Congress has sought to avoid the evils and abuses accompanying the promiscuous granting of temporary relief in industrial controversies by carefully providing specific procedures for obtaining such relief. If the issue is not decided in this case at its present stage, it may never be decided, because to await the outcome of the final hearing is necessarily to moot the question; the temporary injunction can in no event survive the ultimate judgment. Further, since the question of whether petitioners have violated the secondary boycott provisions of the Taft-Hartley Act involved in this case is not seriously controverted by petitioners so that the ultimate merits play no part in the case, there is little likelihood that further proceedings will give rise to additional federal questions. Indeed, a reading of the two decisions of the court below indicate that the merits may never be adjudicated in the state courts, the Alabama Supreme Court presumably having assumed a right to issue temporary relief only for the purpose of preventing irreparable injury until the merits could be decided before the proper tribunal or until the procedures available under the federal Act could be effec-

tively utilized. "The policy against fragmentary review has therefore little bearing." *Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62, at 72.

Mr. Justice Brandeis, speaking for the full Court in *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, has laid down a rule of policy which is directly applicable here. We appreciate, of coure, that the decision is not decisive, review by this Court or the Circuit Courts of Appeal of temporary orders and judgments of the federal district courts not having the same statutory basis as review of state court judgments. Nevertheless the considerations which persuaded the Court in that case to relax it's policy of denying review of temporary orders of the federal district courts is equally persuasive here, the status of the litigation in that case paralleling the status of the litigation here and similar legal points being at issue: Justice Brandeis stated as follows:

> "The Circuit Court of Appeals should have reversed the decrees for a preliminary injunction. It is true that ordinarily the decree of a District Court granting or denying a preliminary injunction will not be disturbed on appeal. But that rule of practice has no application where, as here, there was an insuperable objection to the maintenance of the suit in point of jurisdiction and where it clearly appears that the decree was the result of an improvident excerise of judicial discretion."

This is not like the usual case in which this Court declines review where it is sought to review a decision in respect to the merits or as to some point made in the course of an otherwise unobjectionable interim proceeding. On the contrary, it is the very action of the state court in undertaking to grant temporary injunctive relief which creates the central issue which gives rise to the federal question. Under such circumstances, it is respectfully submitted that this Court can and should exercise its appellate powers. See *Radio Station WOW v. Johnson, supra;*

Rescue Army v. Municipal Court, 331 U.S. 549, at 565-568; *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, at 546.

II

The remedies and enforcement procedures provided by Congress under the 1947 amendments to the National Labor Relations Act are exclusive and preclude jurisdiction in the state courts to grant temporary injunctive relief at the request of private parties.

The issue here is a narrow one: Has Congress, under the Labor-Management Relations Act, precluded state courts, upon application of private litigants, from issuing temporary injunctions against alleged violations of that Act? It is petitioners' contention that Congress has provided exclusive means for the enforcement of the Act, including the obtaining of temporary relief, which do not include the issuance of temporary injunctions by state courts—that Congress has occupied the field and preempted all remedies except those specifically set forth in the Act, and has indicated an intent to exclude state action. Such intent, as specifically indicated by the language of the Act and its legislative history, can be presumed from the fact of Congressional occupancy of the field as well as from rational and policy considerations. Finally and in any event, any attempt by the state to enjoin alleged violations of the federal Act directly conflicts with the provisions of that Act so as to require that such state action be nullified.

The Supreme Court of Alabama held there was no Congressional preemption of remedy, that Congress had not indicated an intent to foreclose the issuance of temporary injunctions for violations of the Act, and that considerations of policy supported jurisdiction in the state courts to issue such preliminary relief in cases of plain irreparable injury where the remedies afforded by the Act might involve delay or where the effect on commerce was slight and it was not known whether the Board would act.

This case involves primarily a question of preemption, although elements of conflict are also present. While many aspects of the problem of preemption in the field of labor relations affecting interstate commerce are yet unresolved, the general principles and those relevant to the present controversy are reasonably clear; with these principles even the court below seems to agree,[2] and it is only in application of these principles that any controversy exists. Since *Houston v. Moore*, 5 Wheat. 1; *Gibbons v. Ogden*, 9 Wheat. (U.S.) 1, and the long line of cases thereafter construing and applying the Federal Supremacy Clause it has not been doubted that the affirmative grant given Congress to regulate interstate commerce under the commerce clause, taken with the Federal Supremacy Clause, permits the federal Congress to bar or exclude state action in any field of interstate commerce in which Congress has chosen to legislate. The problem of preemption is not one peculiar to labor relations; it appears in every field of federal regulation involving interstate commerce. It is not an extension of the federal power at the cost of the states or any doctrinaire nationalism which is involved, but rather the necessity of protecting the integrity of the federal legislative process under the Supremacy Clause so that the will of Congress will not be flaunted in a field specifically given to it under the federal constitution.[3]

In cases of alleged federal preemption or occupancy of the field, as distinguished from cases of conflict, a reading of

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[2] As stated in its principal opinion (R. 46), "of course, Congress could with respect to commerce make provision for an exclusive remedy, which the original Act did." Earlier, the Court stated (R. 45):

> "Therefore, when commerce is affected, under the terms of the Labor Relations Act as amended, injunctive relief in the state court would not be set aside on account of such Act of Congress, unless it clearly excluded the jurisdiction of the state court in that respect."

[3] An excellent discussion of the subject is contained in Ratner, Mozart G., *Problems of Federal-State Jurisdiction in Labor Relations*, 5 Ann. Conference on Labor, New York University, pp. 77-118. See also Cox and Seidman, *Federalism and Labor Relations*, 64 Harv. Law Rev. 211.

the decisions[4] indicates that the ultimate question is always —*did Congress intend to exclude state action in a particular field in which Congress had power to legislate?* Where possible, such intent is determined by resort to the language of the Act. When that is not clear or is inconclusive, Congressional intent to preempt or exclude can be found either by resort to presumption, by resort to consideration of the rationales involved, or by resort to legislative history—to the explanations given in the course of debates or in committee reports. In the present case an intent to make the remedies of the Act exclusive is ascertainable not only in the Act itself but also by resort to any of the other three methods of determining such intent.

A. THE STATUTORY LANGUAGE CLEARLY MANIFESTS CONGRESSIONAL INTENT TO MAKE THE REMEDIES OF THE ACT EXCLUSIVE.

What has Congress manifested in the statute itself regarding its will in respect to remedies for alleged violations of the Act? We can best begin by comparing the scope and nature of the Labor-Management Relations Act of 1947 (Taft-Hartley Act) with that of the National Labor Relations Act of 1935 (Wagner Act), with particular regard to the state of the law in respect to the question of remedy as it existed prior to the passage of the latter Act. There are two basic differences between the two Acts, both significant here. First, the 1947 Act undertook to prescribe broad regulations in the entire field of labor-management relations, embracing both union and employer activities. The earlier Act dealt solely with the problem of attempts by employers to destroy or impede the right of employees to organize, bargain collectively, and engage in certain con-

[4] See particularly discussions of the Court in *Missouri Pacific R. Co. v. Porter*, 273 U.S. 341; *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148; *Hill v. Florida*, 325 U.S. 538; *California v. Zook*, 336 U.S. 725; *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S. 383.

certed activities for their mutual aid and protection. Even though thus limited, the first Act was recognized as one in the public interest for the protection of public rights exclusively by a public agency, not for private individuals by private action. As stated by this Court in respect to the 1935 Act (*Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261):

> "The Board as a public agency, acting in the public interest, not any private person or group, not any employee or group of employees, is chosen as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce." (309 U.S., at 265.)
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> ". . . Congress has in this instance created a public agency entrusted by the terms of its creation with the exclusive authority for the enforcement of the provisions of the Act, . . ." (309 U.S., at 269.)
>
> "We think that the provision of the National Labor Relations Act conferring exclusive power upon the Board to prevent any unfair labor practice, as defined, —a power not affected by any other means of 'prevention that has been or may be established by agreement, code, law, or otherwise'—necessarily embraces exclusive authority to institute proceedings for the violation of the court's decree directing enforcement. The decree in no way alters, but confirms, the position of the Board as the enforcing authority. It is the Board's order on behalf of the public that the court enforces. It is the Board's right to made that order that the court sustains. The Board seeks enforcement as a public agent, not to give effect to a 'private administrative agency.'" (309 U.S., at 269.)

In the 1947 Act Congress considered numerous proposals embracing almost every aspect of labor relations and emerged with a comprehensive code regulating relationships in that entire field. Following extensive debate and argument in respect to many hundreds of proposals, Congress finally arrived at specific conclusions respecting rights, duties, liabilities and immunities of employers, em-

ployees and labor organizations in the field of labor relations and selected specific remedies and forums for the protection and vindication thereof. Compare *General Committee v. Missouri, K. & T. R. Co.*, 320 U.S. 323, at 332, and see *Rabouin v. National Labor Relations Board*, 195 F. (2d) 906, at 912. If Congress intended singleness and expertness of administrative remedy under the first Act, how much greater the need under the 1947 amendments with their comprehensiveness of scope and delicate balancing of intests, and if vindication of rights in the first Act was entrusted to a public agency acting in the public interest, how much greater the need for continuing this concept in the second Act where a far broader segment of the public was made liable to federal regulation? One would suppose that Congress would have utilized very clear language if it intended entirely to change the concept of public administration.

The second basic distinction between the Wagner and the Taft-Hartley Acts is that under the latter the Congress was acutely aware, by virtue of decisions of this Court on the subject, of the grave problems of preemption and legislated specifically with that problem in mind. As stated by this Court in *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S., at 397:

> "When it amended the Federal Act in 1947, Congress was not only cognizant of the policy questions that have been argued before us in these cases, but it was also well aware of the problems in balancing state-federal relationships which its 1935 legislation had raised. The legislative history of the 1947 Act refers to the decision of this Court in Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 91 L. Ed. 1234, 67 S. Ct. 1026 (1947), and, in its handling of the problems presented by that case, Congress demonstrated that it knew how to cede jurisdiction to the states. Congress knew full well that its labor legislation 'preempts the field that the act covers in so far as commerce within the meaning of the act is concerned' and demonstrated its ability to spell out with particu-

larity those areas in which it desired state regulation to be operative."

Aware of the problems of preemption, and aware of the public nature of the Act it was amending and the exclusiveness of remedy thereunder, Congress very significantly did not choose to indicate either by alteration in declaration of policy or in the framework of the Act, or by any affirmative language, that it intended to change the nature of the Act from that of one of vindication of rights in the public interest by a public agency to that of one of vindication of private rights by private individuals. On the contrary, Congress indicated very specifically that remedies under the 1947 amendments were enforceable only by the same public agency that afforded remedies under the 1935 Act, except in the sole situation where that public agency, by express agreement and under certain conditions, might seek to entrust enforcement to the states.

The relevant sections of the 1947 amendments are 10(a), 10(j), 10(k) and 10(l), set forth in full below.[5]

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[5] "Sec. 10(a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

"Sec. 10(j). The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice

thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper."

"Sec. 10(k). Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

"Sec. 10(l). Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D)."

Subsection (a) of Section 10 of both the 1935 and 1947 Acts contains the grant of power to enforce the provisions of the unfair labor practice section of the Act; in consequence the language of that subsection is of vital importance in the determination of the issues in the present case. In the 1947 Act, as under the 1935 Act, the Board alone is empowered to prevent unfair labor practices. The 1947 Act continues to emphasize, as did the 1935 Act, that this power is only for the Board to exercise: *"This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise."* (Emphasis supplied.) The 1947 Congress, however, omitted the phrase "This power shall be exclusive" which appeared in the 1935 Act. Since this omission is strongly relied upon by the court below for its holding that the Congress did not intend its remedies to be exclusive, the reasons for this omission—namely, to accommodate new and additional remedies not contained in the 1935 Act—are discussed in full in a latter portion of this brief. Whatever significance might otherwise have been attached to this omission as it affects the issue in this case, that significance is entirely dissipated by the new proviso clause which the 1947 Congress added to subsection 8, and it is this proviso clause which, along with subsection (1), is controlling in respect to the question of the extent to which Congress intended the states to administer or enforce the unfair labor practice provisions of the Act.

The proviso clause undertakes to specify precisely under what circumstances and conditions the states may exercise jurisdiction to enforce the Act. The clause empowers the Board to cede jurisdiction to any state agency in any case (except cases involving four specified industries) but provides that such cession can be accomplished only by express agreement between the Board and the state and only unless the state law applicable to determination of any case thus ceded is consistent with the federal law. The language of

this proviso makes clear that Congress considered and legislated directly in respect to state enforcement and carefully delineated under what conditions and circumstances the states could exercise jurisdiction. Having considered the problem and taken action thereon, it is not for the state of Alabama or for this Court to add to or take away from the conditions carefully prescribed by Congress under which the states may attempt to enforce the unfair labor practice sections of the Act. The principal *"expressio unis est exclusio alterius"* is directly applicable here; Congress has outlined certain conditions under which states might exercise jurisdiction and no others can be permitted. As stated by the Court of Appeals for the Second Circuit in a recent decision (*Rabouin v. National Labor Relations Board,* 195 F. 2d 906 at 912):

> "In a matter of such bitter controversy as the Taft-Hartley Act, the product of careful legislative drafting and compromise beyond which its protagonists either way could not force the main body of legislators, the courts should proceed cautiously. For it would appear that Congress has already spoken in this regard."

Subsections (b) through (i), which further deal with prevention of unfair labor practices by the Board, are identical in both the 1935 and 1947 Acts. Three new subsections, (j), (k) and (l), are added to the 1947 Act. While subsections (j) and (k) serve to indicate the Congressional scheme of prevention, subsection (l) alone is directly relevant since it deals with prevention of violations of Section 8(b)(4)(A) of the Act, and it is a violation of that section only which was alleged and is involved in the case below.

Subsection (l) is of further importance—indeed, it is equally controlling with the proviso to subsection (a) discussed above—because it undertakes to prescribe the manner in which *preliminary* relief is obtainable for alleged violations of that portion of the unfair labor practice provisions of the Federal Act which are directly involved in this case. Congress having prescribed a certain method of

obtaining interlocutory relief, it must be taken that it intended no other, and the same principles advanced above in respect to the effect of the careful delineation in the proviso clause to subsection (a) are applicable here in respect to the conditions under which temporary relief for alleged violations of the Act can be obtained.

Subsection (l) charges the Board's regional office with the duty of making preliminary investigations of charges that Section 8(b)(4)(A) has been violated. Following such investigation, the Board's regional representative alone is directed mandatorily, if he "has reasonable cause to believe such charge is true," to petition in the district court "for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter." Obviously, careful screening of the charges by representatives of the tribunal of experts which will make the final adjudication is contemplated before injunctive relief is obtainable, and even then such relief is obtainable only by such Board representatives and only in the federal district courts. Section 10(l) is the only section of the entire 1947 Act dealing with the remedying of violations of Section 8(b)(4) with one exception not here relevant.[6]

It is difficult to conceive by what process of reasoning or rule of statutory construction it can be argued that Congress was not concerned with whether this carefully thought out plan for the prevention and remedying of alleged violations of Section 8(b)(4) could be avoided, and the further provisions for the assumption of jurisdiction by state agencies under the method provided in the proviso

[6] Section 303 of the Act confers upon any court, federal or state, of competent jurisdiction power to hear cases for damages inflicted by labor organizations who violate the provisions of Section 8(b)(4) of the Act. Since Section 303 deals specifically with actions for damages and not with actions for injunctions, it is not relevant here except as further indication of the careful way in which Congress has set forth remedies and forums, and except as an indication of the alternative relief provided for persons unable to apply privately for injunctions.

to Section 10(a) be disregarded; if Congress contemplated the assumption of jurisdiction by state courts contended for in the instant case, it would hardly have taken such pains to prescribe its own remedy or the conditions under which states could exercise jurisdiction or, in any event, would have added additional language to the 10(a) proviso clause, thoroughly indicating such intent. Surely, the language used by Congress speaks for itself and is conclusive that the Congressionally-prescribed remedies are exclusive and that states are to act only under the circumstances set forth under the 10(a) proviso clause.

Two other sections of the 1947 Act should be mentioned as indicative of the fact that when Congress desired states to assist in any phase of the administration or operation of the Act, it was careful expressly so to provide. Under Section 14(b)[7] Congress gave the states power to prohibit union-security agreements altogether. The lawmakers explained their reason for this special provision as follows (House Report No. 245, 80th Cong., 1st Sess., p. 40):

> "As under the present act, the power of the Board under the amended act in the matter of unfair labor practices is exclusive. This rule has necessitated a special provision . . . to give to the States a concurrent jurisdiction in respect of closed-shop and other union-security agreements."

Similarly, under Sections 202(c), 203(b) and 8(d)(3), Congress provided for the inclusion of state agencies in the mediation and conciliation of labor disputes by special language suitable to that end.

Given the statutory language and nothing more, it would seem clear that Congress has provided specific remedies for alleged violations of Section 8(b)(4), which remedies

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[7] "Sec. 14(b). Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

are exclusive, and which would prevent state courts from issuing injunctions, preliminary or otherwise, to prevent such violations upon the application of private parties.

As indicated by the Fourth Circuit in *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F. (2d) 183, at 186, what this Court said in respect to the Railway Labor Act in *General Committee v. Missouri, K. & T. R. Co.*, 320 U.S. 323, is equally applicable to the Labor-Management Relations Act of 1947; we quote its language by way of summary of our position here:

> "On only certain phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsions of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate." (320 U.S. at 332.)

As before stated, the decision of the Alabama Supreme Court below relies heavily upon the fact that in the 1947 Act the Congress, in conferring jurisdiction upon the National Labor Relations Board under Section 10(a) to remedy unfair labor practices, omitted the phrase "This power shall be exclusive," which appeared in the similar grant of jurisdiction under Section 10(a) of the 1935 Act. Any attempt thereby to infer that state courts have jurisdiction to grant temporary relief ignores the general structure of the Act, the careful framing of specific remedies for specific violations, and the express language in the proviso clause to Section 10(a), not appearing in the 1935 Act, under which Congress provided that jurisdiction to remedy the unfair practices can be exercised only under express agreement by the Board. These considerations, as held by the Fourth Circuit in the *Amazon Cotton Mill* case, 167 F.

(2d) at 187, in disposing of the contention that omission of the word "exclusive" is significant as showing an attempt to open the door to relief in the state courts, indicate that

> ". . . a remedy in the courts not expressly given is not to be inferred; and especially is this true where Congress has worked out elaborate administrative machinery for dealing with the whole field of labor relationships, a matter requiring specialized skill and experience, and has provided for the handling of unfair labor practices by an administrative agency equipped for the task."

It is to be remembered that use of the word "exclusive" is not controlling in determining whether the enforcement machinery created by Congress precludes other remedies. See *Texas & Pacific Ry. v. Abilene Cotton Oil Co.*, 204 U.S. 426.

Even if there were room for argument on the question, the report of the Conference Committee conclusively indicates that the reason for the omission of the phrase describing that the Board's power of enforcement shall be "exclusive" was to make accommodation for the two new specific grants of jurisdiction contained in the 1947 amendments under Sections 10(j), (k) and (l) and Section 303, namely, that of the districts courts to afford temporary relief and of all courts to entertain suits for damages. The Conference Committee (H.R. No. 510, June 8, 1947, 80th Cong., 1st Sess. 52) stated as follows:

> "The House bill omitted from section 10(a) of the existing law the language providing that the Board's power to deal with unfair labor practices should not be affected by other means of adjustment or prevention, but it retained the language of the present act which makes the Board's jurisdiction exclusive. The Senate amendment, *because of its provisions authorizing temporary injunctions enjoining alleged unfair labor practices and because of its provisions making unions suable*, omitted the language giving the Board exclusive jurisdiction of unfair labor practices, but retained

that which provides that the Board's power shall not be affected by other means of adjustment or prevention. The conference agreement adopts the provisions of the Senate amendment by retaining the language which provides the Board's powers under section 10 shall not be affected by other means of adjustment. The conference agreement makes clear that, when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies." (Emphasis supplied.)

The Fourth Circuit in the *Amazon Cotton Mill* case, *supra*, at 187, relying on this committee report, as well as on the "clear meaning of the statute when its language is considered in light of existing law," stated in this respect as follows:

> "The change in the statute upon which reliance is placed was clearly intended, not to vest the courts with general jurisdiction over unfair labor practices, but to recognize the jurisdiction vested in the courts by section 10, subsections (j) and (l), section 208, and section 303, to which we have heretofore made reference, as well as the power in the Board, conferred by the proviso in section 10(a) to cede jurisdiction to state agencies in certain cases."

In the light of all the foregoing, it is respectfully submitted that in the field of remedy for alleged violations of the unfair labor provisions of the Taft-Hartley Act, most certainly as clearly as in the field of regulation of peaceful strikes for higher wages, "Congress occupied this field and closed it to state regulation." *International Union v. O'Brien*, 339 U.S. 454, at 457.

B. THE FACT THAT CONGRESS HAS SPECIFIED CERTAIN REMEDIES PRESUMES THAT IT HAS EXCLUDED ALL OTHERS.

Even if the language of the 1947 amendments was not as clear as it is in indicating congressional intent to make the remedies specified in the Act exclusive, nevertheless prin-

ciples of presumptive exclusion long followed by this Court would serve to preclude the granting of preliminary injunctive relief as attempted in the courts below. The rule of presumption was long ago pronounced in this Court in *Houston v. Moore*, 5 Wheat. 1, at 20, and has been followed by this Court in numerous cases subsequently decided. In the *Moore* case Mr. Justice Washington, writing for the full court, in speaking of the concurrency of federal and state law, stated that if they

> ". . . correspond in every respect, then the latter is idle and inoperative; if they differ they must, in the nature of things, oppose each other, so far as they do differ. If the one imposes a certain punishment, for a certain offense, the presumption is, that this was deemed sufficient, and under all circumstances, the only proper one. If the other legislature imposes a different punishment, in kind or degree, I am at a loss to conceive, how they can both consist harmoniously together."

Mr. Justice Holmes classically rephrased this proposition in *Charleston & Carolina R.R. v. Varndale Co.*, 237 U.S. 597, at 604, as follows:

> "When Congress has taken the particular subject matter in hand coincidence is as ineffective as opposition, and a State law is not to be declared a help because it attempts to go farther than Congress has seen fit to go."

See also *Missouri Pacific R.R. Co. v. Porter*, 273 U.S. 341, at 345.

The Labor-Managemnt Relations Act reflected the considered judgment of Congress not only as to what substance and form regulation of certain defined labor practices should take but the extent and scope of the remedy for violations and of the forum in which relief could be sought. In it, Congress went so far as it thought right. Alabama has added another remedy and an additional type of relief and a new forum. This it cannot do if the integrity of the federal legislative process is to remain.

A corollary to the usual role of presumption which is directly applicable to the instant case has been recognized by at least four members of this Court dissenting in *California v. Zook*, 336 U.S. 725. That corollary is that where Congress has entered a field and made particular regulations therein and afforded particular remedies or punishment, affirmative consent by Congress to concurrent or additional remedies or punishments by state or other agencies is required. The Labor-Management Relations Act, of course, contains no such express consent and, therefore, under that doctrine the state action must fall. See 336 U.S. at 757. The *Zook* case involved concurrent state and federal statutes prohibiting interstate transportation without Interstate Commerce Commission permit, the state statute carrying with it a greater penalty. Although the state statute was upheld in a five-to-four decision, the Court found that the federal Act there involved, unlike the Labor Relations Act in the present case, carried with it in its language no indication of an intent to override the state laws and that, unlike the present case, there existed no conflict in terms of application, the Court concluding that:

> "In this case the factors indicating exclusion of state laws are of no consequence in the light of the small number of local regulations and the state's normal power to enforce safety and good-faith requirements for the use of its own highways."

C. CONSIDERATIONS OF RATIONALE AND POLICY INDICATE CONGRESSIONAL INTENT TO EXCLUDE INJUNCTIVE REMEDIES IN THE STATE COURTS.

Even though the Act were silent or ambiguous as to Congressional intent in respect to remedy or forum, it is a fair inference, based on policy considerations and on the logic of the situation—on what Congress *must* have intended—that Congress excluded relief or remedy in the state courts and confined remedies to those specified in the Act. As before indicated, when the Act is considered as a whole, in all

its comprehensiveness and detail, and with its exact delineation of remedies, it is certainly not reasonable to attribute an intent to Congress to open wide the use of injunctive processes by private litigants in thousands of state courts in the forty-eight states for the prevention of alleged violations of the unfair practice provisions of the Act. If "uniformity of administrative policy and disposition, expertness of judgment, and finality in determination" (*Aircraft Corp. v. Hirsch*, 331 U.S. 752, at 767) were, as in the case of other federal administrative regulations, to be considered a desirable end, most assuredly to confer on private persons the right to seek injunctions for alleged violations in whatever court, state or federal, they could obtain service, would make that end quite unobtainable. Litigants would be prone to seek that forum which they believed was most favorably inclined to their cause. The result would be a "crazy quilt of diversity"; to impute an intent to permit or tolerate such a result would indeed be "a strained and strange way of interpreting the mind of Congress." (See Justice Frankfurter, dissenting in *California v. Zook*, 336 U.S. at 740.

Judge Parker, in the *Amazon Cotton Mill case*, 167 F. (2d) at 190, pictured the consequence of allowing private parties to sue for injunctions in the following words:

> "If labor unions are permitted to invoke the injunctive process of the courts under the Act, so also are employers. If they may invoke jurisdiction of the courts where they themselves have appealed to the Labor Board, they may invoke it where their adversaries have appealed to that Board. It would follow, therefore, that upon the beginning of a proceeding before either the Board or a court, the party proceeded against could, and probably would, begin a proceeding in the other tribunal. More than two hundred local tribunals of general jurisdiction would be clothed with the special jurisdiction now vested in a unified agency with nationwide jurisdiction over labor controversies; and it is not difficult to foresee the confusion that

> would necessarily result. Certainly the statute should not be given an interpretation which would lead to such consequences."

Judge Parker was presumably speaking of the two hundred federal district courts; the confusion he predicts would be compounded a thousand times were jurisdiction to enjoin unfair labor practices extended to the state courts as well.

Further, were state courts permitted jurisdiction to remedy unfair labor practices, the National Labor Relations Board would be reduced to a state of idle impotency. Few private litigants would bother with the expert processes of the Board when they could go into a friendly state court and enjoin unfair labor practices. Thus, the statutory provisions of Sections 10(j) and 10(l), which provide the Board with authority to enjoin unfair practices, would be reduced to nullities. Congress could not have intended such carefully studied statutory provisions to lie dormant.

Even if we were to rely on only what Congress must have intended and disregard the statutory language or the rule of presumption, the inevitable conclusion is that the only way in which preliminary injunctive relief can be obtained is in the manner specifically provided in the Act; otherwise, enforcement of the Act would be subject to the eroding process of conflicting judicial review at thousands of local state levels.

A final policy consideration indicating that Congress must have intended to exclude state action is this. To permit private parties to apply for preliminary relief in the state courts would, as it has in the present case, create a direct conflict with the procedures spelled out in the federal Act. It may well be that, as stated by Justice Frankfurter, dissenting in *California v. Zook*, 336 U.S. at 740, "talk about 'conflict' as a basis for displacing State by federal enactment is relevent only in situations where Congress has chosen to 'circumscribe its regulation and occupy only a limited field,' while State regulation is 'outside that limited field,' and yet an inference of negation of State acti

sought to be drawn," and that therefore such talk is not relevant in the present case where the claim is that the state action is inside the limited field occupied by Congress. It is respectfully submitted, however, that where, as here, physical conflict exists within the very field, mention of such conflict is relevant at least as indicating anomalies or absurdities of result created by any claim that the state and federal procedures can exist side by side. Regardless of what the Justices of this Court may have had in mind from time to time when they spoke of "preemption" or "conflict" in disputes between federal and state governments under the Supremacy Clause of the constitution, it is surely significant here that the will of Congress so carefully laid out in Sections 10(j) and (l) that cases of alleged violations of the unfair practice sections of the Act be screened by the tribunal making the ultimate decision before resort is had to the courts for temporary relief from alleged irreparable injury is directly flaunted, as in the present case where a private party, at its own option, has chosen to avoid the entire administrative process provided by Congress and has obtained private injunctive relief from its own selected tribunal. Call it "conflict," call it a "superimposition," or call it "preemption," it remains obvious that the two procedures "cannot be reconciled or consistently stand together" (Chief Justice Hughes in *Kelly v. Washington*, 302 U.S. 1, at 10) if the integrity of the federal process is to remain and carefully chosen policy in respect to injunctive relief is to be respected. These policy considerations would indicate that state procedures be voided. See *Hill v. Florida, supra.*

D. THE LEGISLATIVE HISTORY OF THE 1947 ACT DISCLOSES A DIRECT INTENT TO FORECLOSE ALL REMEDIES OTHER THAN THOSE PROVIDED FOR IN THE ACT, AND SPECIFICALLY TO FORECLOSE TEMPORARY RELIEF IN THE STATE COURTS.

The conclusion that Congress intended to foreclose all remedies other than those set forth in the 1947 amendments,

which has been heretofore gathered from the language of the Act itself, from allowable legal presumption, and from fair inference, is strongly supported by the legislative history of the Act and, in particular, by the history of those sections providing for relief from the alleged violations of the secondary boycott provisions of the Act which are the subject of the instant litigation. This history shows that Congress expressly considered the problem of scope of remedy, of whether the exclusive grant of jurisdiction to the National Labor Relations Board contained in the 1935 Act should be continued and, in particular, of whether temporary relief against violations should be obtainable in any court of competent jurisdiction so as to provide a remedy for whatever irreparable injury might be sustained if the Board processes should occasion delay. This history is, of course, particularly relevant as a complete answer to the principal thesis of the Alabama court and other courts[8] which have thus far authorized the granting of temporary relief in a manner other than that provided for in the Act, namely, that Congress could not possibly have intended to usurp the state courts of their traditional function of protecting litigants through the injunctive process against the hazards of irreparable injury. The legislative history shows clearly that Congress specifically pondered this problem, weighed the possibility of potential abuses of the injunctive process against the possibility of potential damages to private individuals suffering irreparable injuries because of possible delays and decided in favor of "procedures under the National Labor Relations Act." (93 Cong. Rec. 5041.) Because of the clarity of expressions of Congressional opinion on this subject, and because they conclusively dispose of the principal argument of those advocating resort to tribunals other than those specified under the Act itself for the purpose of obtaining temporary relief against

[8] See *Oregon ex rel Tidewater-Shaver Barge Lines v. Dobson*, 30 LRRM 2345, (Ore. Supreme Ct, June 4, 1952).

alleged irreparable injury, the most pertinent portions of the debates and committee reports on this particular subject are set forth below in full.

It was Senator Morse who proposed, under Section 10(j), that temporary relief for alleged violations be obtainable only through the Board. Commenting on his proposal, Senator Morse stated as follows (93 Cong. Rec. 1912):

> "My proposal would in no way impair the legitimate rights of labor under the Norris-LaGuardia Act and the Clayton Act [15 U.S.C.A. §12, at seq.], since I do not propose that employers be allowed to obtain injunctions against labor or that unions and their members be subjected to the drastic civil and criminal penalties that could be applied in days gone by."

Senate Report No. 105 on S. 1126, 80th Cong., 1st Sess., p. 8 explained Sections 10(j) and 10(l) as follows:

> "After a careful consideration of the evidence and proposals before us, the committee has concluded that five specific practices by labor organizations and their agents, affecting commerce, should be defined as unfair labor practices. Because of the nature of certain of these practices, especially jurisdictional disputes, and secondary boycotts and strikes for specifically defined objectives, the committee is convinced that additional procedures must be made available *under the National Labor Relations Act* in order adequately to protect the public welfare which is inextricably involved in labor disputes.
>
> "Time is usually of the essence in these matters, and consequently the relatively slow procedure of Board hearing and order, followed many months later by an enforcing decree of the circuit court of appeals, falls short of achieving the desired objectives—the prompt elimination of the obstructions to the free flow of commerce and encouragement of the practice and procedure of free and private collective bargaining. Hence we have provided that the *Board, acting in the public interest and not in vindication of purely private rights,* may seek injunctive relief in the case of all types of unfair labor practices and that it shall also seek such

relief in the case of strikes and boycotts defined as unfair labor practices." (Emphasis supplied.)

Senators Taft, Ball, Donnell and Jenner issued a supplemental report setting forth objections to the provisions of the bill giving the Board exclusive power to obtain temporary relief for alleged violations of the unfair practice sections of the Act. The supplemental report (Senate Rep. No. 105 on S. 1126, Supplemental Views, 1 Legislative History of LMRA, 1947, Gov. Printing Office, 1948, p. 460) states as follows:

"An amendment reinserting in the bill a section making secondary boycotts and jurisdictional strikes unlawful and providing for direct suits in the courts by any injured party. The committee bill admits that such boycotts and strikes are improper, but it only proposes to make them unfair labor practices. This means that appeal must be made . . . to the National Labor Relations Board. The bill does provide that, on petition of the NLRB regional attorney, the Board may obtain a temporary injunction from a court while it is conducting a hearing on the question whether the strike is an unfair labor practice or not. If it finds that it is, it then may issue a cease and desist order against such a strike and later ask to have this enforced by the court. In our opinion, this is a weak and uncertain remedy for those injured by clearly illegal strikes. It depends upon the decision of the National Labor Relations Board as to whether any action shall be taken, and the conduct of the proceedings will be entirely in the hands of the NLRB attorneys instead of attorneys of the injured party. The facts in such cases are easily ascertainable by any court and do not require the expertness supposed to be one of the virtues of the administrative law procedure. In addition to that, the best estimate of the time lag between the filing of charges with the NLRB and its obtaining of a temporary injunction is not less than two weeks to a month.

". . . There will only be a satisfactory remedy if he can go to his local court and obtain an injunction, first temporary and then permanent, against interference of this kind."

In line with these objections, Senator Ball then proposed an amendment which was designed to permit employers to obtain injunctions in district courts against jurisdictional strikes and secondary boycotts. The Ball amendment read as follows (93 Cong. Rec. 4887):

> "(b) The district courts of the United States shall have jurisdiction in proceedings instituted by or on behalf of the United States, *or by any party* suffering loss or damage or threatened with loss or damage by reason of any violation of subsection (a), to prevent and restrain violations of such subsection. It shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings to prevent and restrain violations of such subsection." (Emphasis supplied.)

Senator H. Alexander Smith, of New Jersey, attached a supplemental statement at the end of the committee report, expressing his opposition to this amendment (Senate Report No. 105 on S. 1126, Supplemental Views) as follows:

> "I am opposed to this amendment (Amendment four proposed by the other Senators). While I am in entire accord that there can be no defense of secondary boycotts and jurisdictional strikes, I feel that the reported bill treating these matters as unfair labor practices is the preferable way to deal with them—putting the responsibility on the National Labor Relations Board. Furthermore, I do not favor the opening up of the Norris-LaGuardia Anti-Injunction Act except on petition of the Government. By treating these evils as unfair labor practices, the use of the injunction is given to the National Labor Relations Board and is not open to abuse by individual employers. At least we should experiment with this procedure before adopting the more severe remedies."

Senator Ives of New York expressed his opposition to this amendment as follows (93 Cong. Rec. 5041):

> "It has been pointed out that possibly the unfair labor practice procedure might not be so effective as the direct injunction obtained by the employer. To

some extent, perhaps, it would not be. Perhaps there would not be the immediate action obtainable by injunction, but by and large, the entire suggested procedure is intended to deal with the National Labor Relations Act. The provisions with respect to jurisdictional disputes and with respect to secondary boycotts, which are met by a statutory denial, deal fundamentally with the National Labor Relations Act. In effect, such boycotts and strikes would constitute violation of that act, if indeed they would not actually violate other laws. The remedy should be found in procedures under the National Labor Relations Act. So I say that if there should be a slight delay—and I do not think there would be, once the system is established—but if there should be a slight delay, the right approach is through the provisions of the committee bill without opening the door to abuses which formerly existed and which resulted in the passage of the Norris-LaGuardia Act. I have stated my second reason for opposing the amendment offered by the Senator from Minnesota."

Senator Morse voiced his objections as follows (93 Cong. Rec. 4841):

"It has been my consistent endeavor while this legislation has been under discussion to vest determination of labor problems so far as it is humanly possible to do so in a single organization that is expert in labor problems. I assume that if the debates on this bill have served no other purpose they have demonstrated to all Members of the Senate the complexity of this field. Labor problems are complex, as complex, indeed, as our entire social structure, since the great mass of our people are workers. It is a field which has been growing ever more complex as our society has come to depend upon the output of large industrial enterprises. Nor will these problems be simplified if the legislation we have here proposed becomes law. Close day-to-day contact with these problems is necessary if able persons are to keep themselves even reasonably informed.

"I am confident, despite the high regard in which I hold the district judges of the United States, that they have neither the background, the desire, or the time, to become experts in these matters. It is one thing to

grant to the district courts, upon application of the Board, an interim power to maintain the status quo pending resolution of the problem by the body which we have selected as the expert body to handle such problems. It is quite a different thing to do what this bill proposes, namely, to throw these matters for final decision into the laps of the approximately 250 district judges of the United States, some of whom may have some knowledge of the field, but all of whom can certainly not pretend to be experts . . .

". . . I cannot be convinced that it is sound legislation to disperse the authority over these problems, to draw into the orbit of their handling, a host of district attorneys and Federal judges without competence in the field or, by splitting up authority among all the district attorneys and district judges of the land, to make impossible the development of a uniform body of precedent and decisions, harmoniously integrated with each other over the entire economy."

In the course of debate over the Ball amendment, Senator Ball answered, "Yes, of course," to Senator Ellender's question whether or not it was true in respect to the bill itself, as distinguished from Ball's amendment, that "all of the unfair labor practices covered by the bill against management or labor are processed through the Board." (93 Cong. Rec. 5040.) The Ball amendment was put to vote and defeated 63-28 (93 Cong. Rec. 4847).

Apparently as a compromise, Senator Taft then introduced an amendment authorizing suits for damages caused by jurisdictional strikes and secondary boycotts (93 Cong. Rec. 4843), which was enacted as Section 303 of the Act (93 Cong. Rec. 4874). In answer to a clarification requested by Senator Morse as to whether the Taft proposal might give rise to the granting of injunctive relief in that type of cases, Senator Taft replied (93 Cong. Rec. 5074):

"Let me say in reply to the Senator or anyone else who makes the same argument, that that is not the intention of the author of the amendment. It is not his belief as to the effect of it. It is not the advice of coun-

sel to the committee. Under those circumstances I do not believe that any court would construe the amendment along the lines suggested by the Senator from Oregon."

What is significant about the foregoing legislative history is not only the clear indication of intent to limit remedies to those specifically provided for in the Act, but also the fact that none of the legislators ever even so much as asumed that the express provisions affording remedies set forth in the Act would be anything but exclusive. As stated by Judge Parker in the *Amazon Cotton Mill Co.* case, 167 Fed. (2d) at 189, in commenting upon this legislative history:

> "It is hardly thinkable that, if the effect of the Labor Management Relations Act was to make a fundamental change in the jurisdiction to deal with unfair labor practices, this important fact would not have dawned upon some member of the House or the Senate and have been referred to in the course of the lengthy debate of a measure that was passed over a Presidential veto. That no such suggestion was made gives ample support to the interpretation which, as we have already indicated, we should place upon the text of the act if the history of its passage and the Congressional debates were not available to us."

That Court further stated in respect to this history, at p. 188:

> "There is nothing in the history of the act, the reports of committees or the debates in Congress which even vaguely supports the contention that its effect was to vest jurisdiction in the District Courts to grant relief against unfair labor practices. Everything said by anyone remotely bearing on the matter is to the contrary."

It would serve no purpose to rehearse before this Court the justifications and policy considerations which support the determination of Congress, as a means of eliminating any possibility of a revival of the abuses of the injunctive process which gave rise to the Norris-LaGuardia Act (see

93 Cong. Rec. 4834-4847, 4864, 4868, 6446, 4132-4133, S. Rep. No. 105, 80th Cong., 1st Sess., 56), to subject injunctive relief to a screening process by a responsible and expert federal tribunal, even at the risk of subjecting employers to whatever irreparable injury might be occasioned by the necessity to resort exclusively to the procedures provided under the Act. Such considerations, like those advanced by the Alabama and Oregon courts as arguments for permitting preliminary injunctive relief by private individuals, are best addressed to the Congress which alone has the power to make the determination of an appropriate remedy for enforcement of its own regulations in the field of interstate commerce. *Cf. Lincoln Federal Labor Union No. 19129, et al. v. Northwestern Iron and Metal Co., et al.*, 335 U.S. 525.

III

Judicial authority amply supports the position that Congress, in the 1947 amendments, limited the remedies to those specifically provided for in the act.

The language of the 1947 Act, its legislative history, and proper inference all combine to give an affirmative answer to the question: "Has Congress spoken so as to silence the states?" (Frankfurter, J., dissenting in *Hill v. Florida*, 325 U.S. at 547.) Judicial authority in support of the position that Congress has preempted the field of remedy for violations of the Act, so as to preclude injunctive relief by state courts, is not lacking. The decisions of this Court in *Plankinton Packing Company v. Wisconsin Employment Relations Board*, 338 U.S. 953; *California v. Zook, supra; Amalgamated Utility Workers v. Consolidated Edison Co., supra; Amalgamated Association v. Wisconsin Employment Relations Board, supra*, have already been adverted to, as has the decision of the Fourth Circuit in *Amazon Cotton Mill Co. v. Textile Workers Union, supra.* While the *Amazon* case involved a determination of whether fed-

eral district as distinguished from state courts have jurisdiction to issue injunctive relief at the request of private parties, the principles involved are identical, and the reasoning of Judge Parker is directly applicable. The *Plankinton Packing Co.* case, *supra,* warrants additional mention not only because of the close parallel between that case and the present one, but also because all members of this Court deemed so obvious as to require no discussion the proposition that the federal Act had occupied the field as to those rights, obligations and remedies specifically there set forth so as to exclude even concomitant state action. In a *per curiam* decision, without opinion, this Court held in *Plankinton* that, once Congress had established specific rights and obligations in the field of industrial relations affecting commerce (in that case the right of employees to refrain from joining labor organizations, and the obligation of employers to refrain from interfering with employees in the exercise of this right) and had afforded specific remedies for breach thereof (through the National Labor Relations Board), state agencies were precluded from exercising even concurrent jurisdiction even where no conflict might exist. As stated by this Court when in *Amalgamated Association v. Wisconsin Employment Relations Board,* 340 U.S. f.n. 12, p. 390, it had occasion to discuss *Plankinton*:

> "Since the NLRB was given jurisdiction to enforce the rights of the employees, it was clear that the Federal Act had occupied this field to the exclusion of state regulation. Plankinton and O'Brien both show that states may not regulate in respect to rights guaranteed by Congress in §7."

If, in the *Plankinton* case the action of the Wisconsin Board was stricken because the state had "superimposed upon federal outlawry of conduct as an 'unfair labor practice' its own finding of unfairness" (*Amalgamated Association v. Wisconsin Employment Relations Board,* 340 U.S. at 401), then also must the action of the Alabama court in

superseding or supplanting by its own judgment of what constituted an unfair labor practice the judgment of both the Board acting in its preliminary screening capacity under Section 10(l) and the federal district court having jurisdiction to issue temporary relief under that section. The occupation of the field by federal authority is equally clear in both cases. Surely, if "states may not regulate in respect to rights guaranteed by Congress in §7," by the same token states may not remedy in respect to remedies prescribed by Congress in Section 10. It is submitted that *Plankinton* and the *Bethlehem Steel Co.* and *O'Brien* cases, *supra,* which preceded it are conclusive in the instant case.

Also directly in point is dictum in the earlier case of *California v. Zook,* 336 U.S. at 731, where this Court gave explicit recognition to the proposition that state attempts to provide remedies and enforcement mechanisms in addition to those provided for in the Taft-Hartley Act are invalid even though they might be helpful to the federal Board:

> "And when state enforcement mechanism so helpful to federal officials are to be excluded, Congress may say so, as in the Taft-Hartley Act, 29 U.S.C.A. §160(a), 9 FCA Title 29, §160(a)."

It is significant also that courts of last resort in the states of California, New York and Minnesota have held directly contrary to the holding below; the following cases all hold that state courts have no jurisdiction to grant interim or other injunctive relief for alleged violations of the Taft-Hartley Act: *Gerry v. Superior Court,* 32 Cal. (2d). 119, 194 P. (2d) 689; *Ex Parte Di Silva,* 33 Cal. (2d) 76, 199 P. (2d) 6; *Costaro v. Simons,* 277 App. Div. 1045, rev'd 302 N.Y. 318, 98 N.E. (2d 454; *Ryan v. Simons,* 277 App. Div. 1000, 100 N.Y.S. (2d) 18, aff'd 302 N.Y. 742, certiorari denied, 342 U.S. 897; *Norris Grain Co. v. Seafarers Int'l Union,* 232 Minn. 91, 46 N.W. (2d) 94. Furthermore, the Courts of Appeal for the Eighth and Ninth Circuits, as well as various of the federal district courts have indicated

sharp disagreement with the concept that remedies other than those specifically provided for in the federal Act are available: *See Amalgamated Association v. Dixie Motor Coach Corp.*, 170 F. (2d) 902 (C.A.8); *Schatte v. Theatrical Stage Employees*, 182 F. (2d) 158 (C.A.9), certiorari denied, 340 U.S. 827; *California Association v. Building Trades Council*, 178 F. (2d 175 (C.A.9); *I.L.U. v. Sunset Line & Twine Co.*, 77 F. Supp. 119 (N.D. Cal.); *United Packing House Workers v. Wilson & Co.*, 80 F. Supp. 563 (N.D. Ill.); *Textile Workers Union v. Berryton Mills*, 28 LRRM 2540 (N.D. Ga., July 23, 1951); *Born v. Cease*, 101 F. Supp. 473 (D. Alaska); compare *Reavis v. I.B.E.W.*, 101 F. Supp. 542 (N.D. Tex.).

Assuredly in this case, if any, "This Court, in the exercise of its judicial function, must take the comprehensive and valid federal legislation as enacted and declare invalid state regulation which impinges on that legislation." (*Amalgamated Association v. Wisconsin Employment Relations Board, supra*, at 398.)

IV

The various arguments advanced by respondent in the Court below to support state court jurisdiction to grant temporary relief are without merit.

What has been said heretofore in this brief serves as an answer, at least for the most part, to the various contentions heretofore made by the respondent in this case and to the arguments contained in the decision of the court below. By way of summary:

(1) The principal argument below—that by leaving out the word "exclusive" in Section 10(a), Congress intended to open the door to common law remedies in the state courts—is answered not only by the framework and setting of the Act itself, together with the express language in the proviso to Section 10(a) which specifies an intent to permit outside jurisdiction only in a limited manner and only

under express agreement of the Board, but also by the legislative history which indicates specifically an intent to confine remedies to those mentioned in the Act, the word "exclusive" being removed to accommodate additional remedies not appearing in the predecessor Act.

(2) The argument that Congress could not have intended to eliminate, even though it had the power so to do, so traditional and important a remedy as that of injunction against admitted irreparable injury without very affirmatively so indicating ignores the fact that such affirmative expression of intent does exist both in the language of the Act and very specifically in its legislative history and that, in any event, whether relief against alleged irreparable injury caused by violations of federally-created obligations should exist is for Congress alone to decide, so that any arguments pointing to the advisability of allowance for such relief should be addressed to Congress and not to this Court.

Similar pleas for the necessity of affording a remedy for alleged irreparable injuries, even though they were in addition to remedies specifically provided for by Congress, were made in respect to the National Labor Relations Act of 1935. This Court, speaking through Justice Brandeis in *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, at 50, answered such contentions as follows:

> "The Corporation contends that, since it denies that interstate or foreign commerce is involved and claims that a hearing would subject it to irreparable damage, rights guaranteed by the Federal Constitution will be denied unless it be held that the District Court has jurisdiction to enjoin the holding of a hearing by the Board. So to hold would, as the Government insists, in effect substitute the District Court for the Board as the tribunal to hear and determine what Congress declared the Board exclusively should hear and determine in the first instance. The contention is at war with the long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened

injury until the prescribed administrative remedy has been exhausted. That rule has been repeatedly acted on in cases where, as here, the contention is made that the administrative body lacked power over the subject matter.

"Obviously, the rule requiring exhaustion of the administrative remedy cannot be circumvented by asserting that the charge on which the complaint rests is groundless and that the mere holding of the prescribed administrative hearing would result in irreparable damage. Lawsuits also often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact."

(3) The argument tentatively advanced by respondent but not appearing in the decision of the court below—that the injunction was issued to protect rights granted under state statute rather than federal law so as to bring the case within *International Brotherhood v. Hanke*, 339 U.S. 470, and *Building Service Employees v. Gazzam*, 339 U.S. 532—is answered, first, by the fact that, as stated in the principal decision of the court below, "the allegations of the bill itself show that reliance is had on the National Labor Relations Act, as amended, for the purpose of determining whether or not the plaintiff is entitled to an injunction" (R. 41); and second, by the fact that the state law allegedly invoked is by respondent's own admission (respondent's brief in opposition to certiorari, pp. 8-9) made violative of the federal Act as well, thus bringing respondent's case within the *Plankinton* case, *supra*.

(4) The argument that the activity complained of "does not impede the flow of commerce . . . but incidentally affects commerce" (R. 43), and that, therefore, the Board might not have jurisdiction or may not exercise jurisdiction, can be answered in several ways.

First, Congress itself made no distinction between what might affect commerce and what might impede its flow; the Act simply (Section 10(a) states that "The Board is

empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) *affecting commerce.*" (Emphasis supplied.) The term "affecting commerce" is defined in Section 2(7) as meaning "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." By this, "Congress drew no distinction but, instead, saw fit to regulate labor relations to the full extent of its constitutional power under the Commerce Clause." *Amalgamated Association v. Wisconsin Employment Relations Board, supra.* Lacking express Congressional language indicating an intent to permit concurrent jurisdiction in some undefined borderline area, the state courts could have no more jurisdiction over such borderline area than over any other area covered by the Act. If the Act applies and the Labor Board has jurisdiction at all, then state courts are exluded. On the other hand, if the Board had no jurisdiction and the federal Act no application, then we would have a different case both before this Court and the court below, and all the argument as to Congressional intent would be irrelevant.

Second, respondent's complaint, as well as its affidavits in support of its application for temporary injunction (R. 22, 30) indicate quite clearly that commerce would be substantially affected. (See Board's Sixth Annual Report, p. 16.) Thus, on the basis of the only record before the court below it would have been unable to make any finding that commerce was not in any way affected, nor did it make any such determination.

Third, if the court below intended to say that the Board might, in its discretion, refuse to exercise its admitted jurisdiction because the effect on commerce was not substantial, or for some administrative reason, to this it can be answered, first, that no opportunity was given the Board to exercise such discretion so that the filing of charges by

respondent invoking Board jurisdiction would, at the very least, seem an indispensable prerequisite to even attempting to secure relief before the state court on the ground that the Board's facilities were inadequate. As the case presently stands, the question whether the Board would or would not grant respondent any relief is a matter of pure conjecture and speculation. Further, to argue for some residual power in the states to grant temporary relief in a hardship or other type of case is to ignore the thesis underlying this entire matter, namely, that Congress has chosen to exclude all state action other than that specifically granted or authorized under the Act itself. Accordingly, even had respondent made application to the Board, and the Board for administrative reasons had refused to process the case, respondent nevertheless could have no standing in the courts below. It must be remembered that it is federally-created rights and obligations that we are talking about, not those existing by virtue of some state statute or state common law.[9] Congress has decreed in Taft-Hartley, in the exercise of its power under the commerce clause and under the Supremacy Clause of the federal constitution, that states may exercise jurisdiction to grant remedies or relief in respect to these rights and obligations only under the limited circumstances and under the limited conditions set forth in the proviso clause to Section 10(a). These conditions have not been met in the present case—no agreement ceding jurisdiction has been entered into between the National Labor Relations Board and any state agency in Alabama—and accordingly the Alabama courts could have no jurisdiction to grant respondents relief whatever the assertions as to hardship might be.

[9] Of course, even though a state statute or state common law were involved, to the extent that such statute or law paralleled the federal law, the principles of *Plankinton Company, supra*, would be applicable, and to the extent that there was conflict the principles of *International Union v. O'Brien, supra*, would apply, so that in either instance attempts to enforce or obtain injunctive relief under such statute or law must fail.

CONCLUSION

Whatever the test or method of approach utilized, it is clear that Congress, in the 1947 Amendments to the Wagner Act, intended to continue to confine remedies for alleged violations of the Act to those specified in the Act, as amended, and has intended to preclude the states from exercising any jurisdiction to enforce the provisions of the Act, whether by temporary injunction or otherwise, except under certain conditions and circumstances not present in this case. Congress having preempted the field, and the action of the state court below in granting temporary relief at the request of a private litigant being in direct conflict with the procedures outlined in the federal Act, the action of the courts below in granting temporary relief must be nullified and those courts held to be without jurisdiction in the premises. Accordingly, it is respectfully requested that the decision of the Supreme Court of Alabama herein be reversed.

Respectfully submitted,

J. L. Busby,
Earl McBee,
714 Massey Building,
Birhamingham 3, Alabama.

J. Albert Woll,
Herbert S. Thatcher,
James A. Glenn,
Joseph E. Finley,
736 Bowen Building,
Washington 5, D. C.

Counsel for Petitioners